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Administrative Policy Changes for Taxable Employment Benefits

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Administrative Policy Changes for Taxable Employment Benefits

In 2007, the Canada Revenue Agency (the "CRA") initiated a review of taxable benefits to employees and the related administrative costs to employers. During this review, the CRA has worked with other government and external stakeholders. Based on the findings, the CRA is announcing the following changes to its administrative policies for taxable employment benefits in order to reduce a number of administrative difficulties and increase fairness:

- Overtime Meals and Allowances Provided to Employees
- Municipality or Metropolitan Area
- Loyalty Programs
- Employer Provided Motor Vehicles Required to be Taken Home at Night
- Non-cash Gifts and Non-cash Awards
- Surface Transit Passes Provided to Family Members of Transit Employees

Overtime Meals and Allowances Provided to Employees

The CRA's current administrative policy allows for a non-taxable status of certain overtime meals or reasonable allowances for overtime meals. This is the case if the employee worked three or more hours of overtime right after his or her scheduled hours of work; and the overtime was infrequent and occasional in nature (less than three times a week).

Concerns have been raised to indicate the economic benefit received by the employee are often minor, the meaning of a "reasonable allowance" is not always clear, employer policies often allow for meal allowances after two hours of overtime and the strict application of the limitation of "less than three times in a week" sometimes leads to certain inequitable results.

In order to address these issues, effective for the 2009 year, the CRA will consider no taxable benefit to arise if:

- the value of the meal or meal allowance is reasonable; a value of up to $17 will generally be considered reasonable,
- the employee works two or more hours of overtime right before or right after his or her scheduled hours of work, and
- the overtime is infrequent and occasional in nature. Less than three times a week will generally be considered infrequent or occasional. This condition may also be met where the meal or allowance is provided three or more times per week on an occasional basis to meet workload demands such as major repairs or periodic financial reporting.

If overtime occurs on a frequent basis or becomes the norm, the CRA considers the overtime meal allowances to be a taxable benefit since they start taking on the characteristics of additional remuneration.

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Municipality or Metropolitan Area

In some circumstances, employer-provided travel (including meal) allowances paid in respect of travel **within** the "municipality" or, if there is one, the "metropolitan area" can be excluded from income. Effective for 2009, the CRA will accept that these allowances paid for travel within the municipality or metropolitan area may be excluded from income if the allowance is paid primarily for the benefit of the employer. That is, an allowance may be excluded from income when its principal objective is to ensure that the employee's duties are undertaken in a more efficient manner during the course of a work shift, and where allowances paid are not indicative of an alternate form of remuneration.

Loyalty Programs

Many employees collect loyalty points (e.g., frequent flyer points) on their personal credit cards offered by third parties when travelling on employer reimbursed business trips or incurring other business related expenses. These points can be exchanged or redeemed for goods and services, including gift certificates.

The CRA has been of the view that where an employer does not control the points accumulated under such programs, it will be the responsibility of the employee to determine and include in income the fair market value of any benefits received or enjoyed. However, employees often face significant difficulties with respect to the valuation of these benefits as well as tracking and identifying the benefits attributable to points accumulated by way of employment versus personal use of the credit cards. Effective for 2009, the CRA will no longer require these employment benefits to be included in an employee's income, so long as:

- the points are not converted to cash,
- the plan or arrangement is not indicative of an alternate form of remuneration, or
- the plan or arrangement is not for tax avoidance purposes.

It should be noted that where an employer controls the points (e.g., a company credit card), the employer will continue to be required to report the fair market value of any benefits received by the employee on the employee's T4 slip when the points are redeemed.

Example – Personal Credit Card

Pauline's employer has allowed her to use her personal credit cards whenever possible to pay for business expenses, which the employer subsequently reimburses to Pauline. To maximize the points earned, Pauline used her personal credit cards to pay for various employer business costs, including travel expenses of other employees.

The CRA would not consider such an arrangement to qualify as a non-taxable amount under the administrative policy. The arrangement is indicative of having been made in order to provide a benefit to the employee as an alternate form of remuneration. In this case, Pauline must determine and include in income on her personal income tax return, the value of benefits received or enjoyed.

Example – Company credit card points as benefit to the employee

Jennifer's employer has a company credit card, under which loyalty points are earned. The employer is billed and pays the credit card charges. The employer allows Jennifer to redeem the points for her personal use. In such circumstances, the fair market value of the goods or services received by Jennifer will represent a taxable employment benefit. In this case, the employer must include and report the value of the benefit on the employee's T4 slip.

Employer Provided Motor Vehicles Required to be Taken Home at Night

Sometimes, an employer provides a motor vehicle to an employee and requires the employee to take the vehicle home for business reasons while also prohibiting any other personal use of the vehicle. This travel between home and work is generally considered personal use of the employer-provided vehicle, which results in an employment benefit to the employee.

Where the motor vehicle does not fall within the definition of "automobile" under subsection 248(1) of the *Income Tax Act* (the "Act"), the employment benefit for the personal use of the vehicle is included in the employee's income under paragraph 6(1)(*a*) of the Act. That amount is determined by the reasonable economic benefit derived by the employee from the personal use. The CRA generally accepts the rates prescribed in section 7306 of the *Income Tax Regulations* (the "Regulations") for this purpose. In most areas of Canada, that rate is currently 52 cents per kilometre for the first 5,000 kilometres driven and 46 cents for each additional kilometre.

However, in the circumstances described above, the employee might still have to incur the costs of acquiring a vehicle for personal purposes. In this case, the economic benefit received by the employee for the use of the employer's vehicle is equal only to the variable costs of the commute. It would be more reasonable to tax this benefit based on the operating benefit rate as prescribed in section 7305.1 of the Regulations which are announced annually. The rate for most employees in the 2008 and 2009 years is 24 cents per kilometre. The CRA has accepted this rate to represent a reasonable benefit where all of the following conditions are met:

1) The motor vehicle is not defined as an automobile under subsection 248(1) of the Act.

   Where the motor vehicle falls within the definition of an "automobile", the Act prescribes the calculation of the standby charge and operating benefit. Further information is provided in the CRA's publications T4130, *Employers' Guide – Taxable Benefits and Allowances* which may be found on the CRA website at: **http://www.cra-arc.gc.ca/E/pub/tg/t4130/README.html** .

2) The terms under which the motor vehicle is provided to the employee prohibit any personal use of the motor vehicle other than commuting between home and work and the vehicle has in fact not been used for any other personal use.

   The CRA would expect these terms be stipulated in writing to the employee in order to qualify for this condition. If there has been other personal use of the vehicle, the employee will not qualify for the rate prescribed under section 7305.1 of the Regulations. The onus will be on the employee to demonstrate there has been no other personal use of the vehicle.

3) The employer has *bona fide* business reasons for requiring the employee to take the motor vehicle home at night, such as;

   (a) there are reasonable security concerns with respect to the employer's tools and equipment being left at the worksite or overnight at the employer's premises, or

   (b) the employee is on-call to respond to emergencies and the motor vehicle is provided to improve response to emergencies. The CRA will generally consider emergencies to be of the nature directed towards the health and safety of the general population, or significant disruption to the employer's operations.

4) The motor vehicle is specifically designed, or suited for, the employer's business or trade **and** is essential in a fundamental way for the performance of the employment duties. The mere transportation of the employee does not meet the condition of "performance of employment duties". Examples of where these conditions may be met include:

   (a) the motor vehicle is especially designed (or significantly modified) to carry tools, equipment or merchandise for the business or trade and is essential in a fundamental way for the performance of the employment duties,

   (b) the motor vehicle is suited for and consistently used to carry and store heavy, bulky or numerous tools and equipment and is essential in a fundamental way for the performance of the employment duties, e.g., pick-up trucks and vans. These items would be of a nature that could not easily be loaded and unloaded from the vehicle,[1]

   (c) the motor vehicle is used on a regular basis to carry material that is noxious and malodorous, such as veterinary samples or fish and game, or

   (d) the employee is on-call for emergencies as described in 3)(b) above, the motor vehicle is a clearly marked emergency-response vehicle, or specially equipped so as to provide for rapid response, or for the purposes of carrying specialized equipment to the scene of the emergency.

It should be noted that when calculating the benefit, the use of these vehicles is not considered personal if the employee proceeds directly from home to a point of call (e.g., scene of emergency) or returns home from that point of call.

[1] For the purposes of this condition, tools and equipment do not include office supplies, work documents, laptops, personal travel items, etc.

Example 1: Delivery van

Leslie is the manager of a restaurant. The business uses a van that has been specially modified in such a way so that it can be used more efficiently to transport and deliver food orders. The employer requests Leslie to take the van home at night in case of a need to respond to an emergency at the restaurant, such as an after hour alarm or to fill in on busy nights. This particular van is a motor vehicle that does not fall within the definition of an automobile and Leslie is prohibited from using the van for any other personal use.

These circumstances do not meet all of the conditions of the administrative policy. Although the vehicle has been modified for business needs, it is not required to be brought home for sufficiently *bona fide* business reasons. There are not sufficient security concerns for the contents of the vehicle. Additionally, the vehicle is also not the type that is suited for, or is being used for, responding to emergencies.

Example 2: Emergency vehicle

Mary works for a gas utility company and is required to be on-call two weekends out of every month in order to respond to emergencies directly from her home. The SUV, which the employer provides the employee for these weekends, displays the company's name, has a light on the roof and has been modified in order to carry specialized equipment to the scene of the emergencies. This particular SUV that Mary uses is a motor vehicle that did not fall within the definition of an automobile. The company has a written policy prohibiting any other personal use of these vehicles, other than driving between the worksite and home and Mary has in fact not used the vehicle for any other personal driving.

Mary's employer may calculate the personal use of the vehicle based on the rate provided for under section 7305.1 of the Regulations.

Non-Cash Gifts and Non-Cash Awards

The CRA's current gifts and awards policy was introduced in 2001 with an intention to remove the burden of determining the fair market value of small gifts and awards and recognize common business practices. It allowed for the non-taxation of up to two non-cash gifts costing the employer in total $500 or less, as well as the non-taxation of up to two non-cash awards costing the employer in total $500 or less. In addition, the condition that the employer could not deduct the costs as business expenses was also removed. At that time, the CRA stated:

> "This new position will be closely monitored and will be adjusted if abuse or undue revenue loss is identified."

The CRA has received submissions that the current policy has not significantly reduced administrative burden in cases where numerous immaterial items may be given to an employee in a year. Concerns also include employers introducing gift and award policies principally for the purpose of providing tax-free remuneration to employees. Additionally, numerous tax planning questions are received as to how to maximize the tax-free status by categorizing items in order to qualify for either the gift policy or award policy. Effective for 2010, to address these issues, the following changes and clarifications are being made to the CRA's gift and award policy:

- Non-cash gifts and non-cash awards to an arm's length employee, regardless of number, will not be taxable to the extent that the total aggregate value of all non-cash gifts and awards to that employee is less than $500 annually. The total value in excess of $500 annually will be taxable.
- In addition to the above, a separate non-cash long service/anniversary award may also qualify for non-taxable status to the extent its total value is $500 or less. The value in excess of $500 will be taxable. In order to qualify, the anniversary award cannot be for less than five years of service or for five years since the last long service award had been provided to the employee. For the purposes of applying the $500 thresholds, the annual gifts and awards threshold and the long service/anniversary awards threshold are separate. In other words, a shortfall in value under one policy cannot be used to offset an excess value of the other.
- The employer gift and award policy will not apply to non-arm's length employees (e.g., relative of proprietor, shareholders of closely held corporations) or related persons of the non-arm's length employee.
- For clarification purposes, items of an immaterial or nominal value, such as coffee, tea, T-shirts with employer logos, mugs, plaques, trophies, etc., will not be considered a taxable benefit to employees. There is no defined monetary threshold that determines an immaterial amount. Factors that may be taken into account include the value, frequency, and administrative practicability of accounting for nominal benefits.

The CRA's administrative policies as to the qualifying nature of gifts and awards will remain unchanged. For example, performance-related rewards (e.g., sales targets) or cash and near cash awards (e.g., gift certificates) will continue to fall outside the administrative policy and will be required to be included in the taxable income of the employee. Further details as to the qualifying nature of gifts and awards may be found on the CRA's website at: **http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/bnfts/gfts/menu-eng.html**.

Example

In 2010, Jeffrey's employer has given him the following gifts and awards:

Gifts & Awards	Value
T-shirt with employer logo	$15 (cost)
Birthday gift (monetary gift certificate)	$75
Reward for meeting sales performance target (weekend holiday).	$400
10-year anniversary award (art print). The last anniversary award received was for his 5th year anniversary with the employer.	$275
Wedding gift (crystal vase)	$300
Innovation and excellence award (tickets to a sporting event)	$250
Holiday season gift (watch)	$150

Tax consequences:

The T-shirt has no tax consequences as it is of an immaterial/nominal value.

The gift certificate is not eligible for the gift and award policy since it is a near-cash gift.

The weekend holiday given to the employee for meeting the sales performance target is not eligible for the gift and award policy since it is considered a form of remuneration.

The 10-year anniversary award is eligible under the long service/anniversary award policy. No taxable benefit will arise for this award as Jeffrey has not received an anniversary award for the past five years of service and the total value of the gift was not in excess of $500.

The total value of the remaining gifts and awards (wedding, innovation and excellence and holiday season) amount to $700. The employee will be considered to have received a taxable benefit in the amount of $200 ($700 - $500).

Note:

Although the 10-year service/anniversary award was $225 less than the allowable $500 threshold, this shortfall **cannot** be applied to offset the taxable benefit arising as a result of the excess value of the annual gifts and awards over $500.

Surface Transit Passes Provided to Family Members of Transit Employees

Employers sometimes provide free or discounted transit passes to family members of employees that are employed in the business of operating bus, streetcar, subway, commuter train, and ferry services. The CRA had administratively allowed for the non-taxable status of these passes when provided to the transit employees and their families.

Effective for 2010, the non-taxation of free or discounted surface transit passes only applies for passes provided to the transit employee and for the exclusive use of the employee. Free or discounted passes provided for an employee's family member will represent a taxable benefit to the employee. Furthermore, passes provided to employees who work in functions separate from the transportation operations will continue to represent a taxable employment benefit under this policy (e.g., municipal employees not directly employed by a transit commission).

CRA's ongoing commitment

The CRA will continue its on-going review of employment benefit policies and procedures and will continue to work with the Canadian Payroll Association (CPA) and other stakeholders to identify simplification options to reduce compliance burdens and improve fairness.